

ANTONIO PONCE
Claimant

VS.

IBP, INC.
Respondent

AND

SELF INSURED
Insurance Carrier

Based upon the evidence presented and for preliminary hearing purposes, the Appeals Board finds as follows:

In the instant case, respondent alleges the Administrative Law Judge exceeded his jurisdiction in ordering temporary total disability compensation without claimant's testimony. This is not an issue enumerated in K.S.A. 44-534a(a)(2) which authorizes review by the Appeals Board. However, K.S.A. 44-551(b)(2)(A) grants the Appeals Board authority to review preliminary hearing orders when it is alleged the Administrative Law Judge exceeded his or her jurisdiction in granting or denying benefits as alleged herein by the respondent.

The authority for the Administrative Law Judge to make a preliminary award of temporary total disability compensation, pending the conclusion of a full hearing, is specifically set forth in the preliminary hearing statute and has been affirmed by the Appeals Board in a number of previous decisions. See K.S.A. 44-534a(a)(2). However, the respondent incorporates into the issue raised herein, that the Administrative Law Judge exceeded his jurisdiction by ordering such temporary total disability compensation without the claimant's testimony. Respondent argues that since the claimant was not present to testify that he failed to meet his burden of proof that he was temporarily and totally disabled. Additionally, the respondent contends denial of due process because respondent's attorney did not have the opportunity to cross-examine the claimant on the issue of whether or not he was temporarily totally disabled. The respondent must be permitted an opportunity to present evidence, including testimony, on disputed issues at a preliminary hearing. See K.S.A. 44-534a(a)(2). The Appeals Board has examined the Preliminary Hearing record and finds respondent did not make any request to take the claimant's deposition in order to examine the claimant concerning his request for temporary total disability benefits. Since no request was made, the Appeals Board finds the respondent's due process rights were not violated.

In regard to the issue of whether the claimant has met his burden of proof in reference to an award of temporary total disability compensation, the Appeals Board finds that it does not have jurisdiction to review this issue. The Administrative Law Judge has authority pursuant to K.S.A. 44-534a(a)(2) to grant or deny such benefits. The Administrative Law Judge in this matter determined that the evidence presented, in the form of medical records, established that claimant was temporarily totally disabled and the respondent did not present evidence to the contrary.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Floyd V. Palmer, dated September 15, 1994, granting claimant's request for temporary total disability benefits and denying medical mileage, is affirmed and remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of February, 1995.

BOARD MEMBER PRO TEM

BOARD MEMBER

BOARD MEMBER

cc: Stephen Doherty, Kansas City, KS
Pamela Falk, Emporia, KS
Floyd V. Palmer, Administrative Law Judge
George Gomez, Director